



December 3, 2010

VIA ECFS

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Ross A. Buntrock

Attorney
202.775.5734 DIRECT
202.857.6395 FAX
buntrock.ross@arentfox.com

Re: Ex Parte Presentation: WC Docket No. 07-135

Dear Ms. Dortch:

Yesterday, in a series of meetings on behalf of Northern Valley Communications, LLC ("Northern Valley"), a South Dakota CLEC, former Commissioner Harold Furchtgott-Roth, Northern Valley's CEO James Groft, David Carter and I met to discuss the November 30, 2010 comments filed in this docket by former Commissioner Furchtgott-Roth. We met with the following individuals: Commissioner Mignon Clyburn; Angela Kronenberg, Wireline Legal Advisor to Commissioner Clyburn; Christine Kurth, Policy Director and Wireline Counsel to Commissioner McDowell; and Margaret McCarthy, Policy Advisor to Commissioner Capps.

During the meetings, James Groft discussed Northern Valley's provision of wireline and wireless broadband internet access, digital video, local and long distance telephone service, website hosting, computer leasing, and conference calling in rural South Dakota, where the company serves over 4,000 residents and businesses. He also discussed the significant time and expense incurred by Northern Valley in its on-going efforts to end the unlawful self help campaigns of IXC's, particularly Qwest and Sprint, which has diverted resources from Northern Valley's core business of providing advanced telecommunications services and forced Northern Valley to discontinue efforts to expand its broadband network and to downsize its workforce. The attached PowerPoint summarizes this discussion.

Commissioner Furchtgott-Roth then reiterated the key findings of his recent comments, which has already been filed in the docket and is incorporated by reference herein. His observations include that:

- a. The Commission has yet to explain any compelling need for new rules;
- b. Even if the Commission were to explain a theoretical concern, deregulation and competition are the law of the land and a hyper-regulatory approach that forces LECs to

Arent Fox

discriminate between end users is inappropriate and the Commission should allow market forces to play out;

c. The specific issues that the Commission raises in the NPRM do not, in fact, support the creation of new rules, particularly with regard to CLECs; and

d. Several important issues, including IXC self help and the statutory responsibility to promote rural competition, are not addressed in the Notice of Proposed Rulemaking and should be addressed if and when the Commission takes any further action.

Commissioner Furchtgott-Roth observed that it is not long ago, in the CLEC Access Charge Order, that the Commission specifically considered the issue of whether CLEC access charges should apply to conference calling and similar services and appropriately concluded that IXCs are required to pay access charges for calls terminating to these services and that further regulation regarding these services was unwarranted. Commissioner Furchtgott-Roth explained how important it is to LECs generally, and rural CLECs in particular, for the Commission to stand behind its conclusions in that order and do nothing that might be viewed as a retroactive invalidation of that policy.

We also discussed the Commission's tentative conclusion in the NPRM that it could potentially use section 10 forbearance authority to overcome the clear mandate of section 204(a)(3) of the Act in an effort impose further regulatory requirements on LECs that experience an increase in demand for access services. The former Commissioner explained that this would not be simply a misguided policy, but also in direct contradiction to the intent of Congress, which sought to provide LECs with certainty about the effectiveness of their tariff. Further, we discussed how the lack of a clear definition of "access stimulation" makes regulation not just extremely difficult to manage in the long term, but also highly likely to produce unintended consequences that would curb economic development opportunities for small business in rural America.

Commissioner Furchtgott-Roth also observed that he has not seen any record evidence that substantiates the recent claims by Qwest, TEOCO, and others regarding the purported "costs" of access stimulation or related claims that IXCs are losing money as a result of free conference calling and similar services. Indeed, Commissioner Furchtgott-Roth discovered only two discussions in any of the IXCs' publicly-filed 10-K statements, neither of which substantiated the claim that IXCs' long distance services were becoming or had become unprofitable as a result of "access stimulation." To the contrary, the public statements demonstrated that the major IXCs are making a profit on average of several cents per minute on long-distance traffic, even after paying access charges and regulatory fees. Accordingly, we discussed the need for those making these claims to substantiate them through a full disclosure of

records, including an analysis of costs **and revenues**. In this regard, we noted that the lack of a clear definition of so-called “access stimulation” has allowed IXC’s to expand the dispute substantially over the past three years as a means of inflating their estimations of “cost” and, as such, these estimations are inherently unreliable.

Finally, we discussed the vital need for the Commission to reaffirm its long-standing prohibition against self help. We noted that Qwest and Sprint are continuing to engage in self help withholding from Northern Valley.

If you have any questions, please do not hesitate to contact me.

Respectfully submitted,

/s/

Ross A. Buntrock,
Counsel to Northern Valley Communications, LLC

cc: Commissioner Clyburn
Christine Kurth, Legal Advisor
Margaret McCarthy, Legal Advisor
Angela Kronenberg, Legal Advisor

NORTHERN VALLEY COMMUNICATIONS

Company Overview

December 2, 2010



SERVICE AREA

- Competitive provider in northeast South Dakota
- Brown County
 - population-35,000
 - per capita income-\$23,699
 - household income-\$44,619
- Spink County
 - population-7,000
 - per capita income-\$15,728
 - household income-\$31,717



INVESTMENT & COMMITMENT

- In business since 1997
- \$26,000,000 invested in broadband infrastructure
- 35 employees
- Average wage higher than community average
- Community investment
 - scholarships
 - economic development initiatives
 - community boards



SERVICES

- Wireline broadband internet access
- Wireless broadband internet access
- Mobile broadband internet access (soon)
- Business Ethernet
- Digital video
- Local and long distance telephone
- Website hosting
- Computer leasing (to those that can't buy)
- Conference calling



CUSTOMERS

- Serve over 4,000 business and residential customers
- Typical residential customer
 - 14Mb broadband, digital video, voice
- Typical business customer
 - 14Mb broadband, multiple voice lines
- Serve hospitals, clinics, banks, manufacturing, printing, education, agriculture, retail, lodging, and food service



BROADBAND NETWORK

- DSL, FTTH, and wireless
- Available to all customers
- Speeds up to 14Mb on ADSL2+
- Upgrade to VDSL2 coming soon
- Added features-PC support services, online backups, online bill payment, ESPN3
- Enabling education, employment, and entertainment that would not otherwise be available



IXC SELF HELP

- We are not “traffic pumpers” -- IXC customers originate and Northern Valley terminates each of the calls at issue
- The nation’s largest telecommunications carriers are engaging in self help as a means of applying economic pressure to small competitive carriers like Northern Valley
- The “little guy” needs the FCC to enforce its previous precedent against self help in order to continue fostering a pro-competitive environment



IXC SELF HELP

- Northern Valley has been fighting illegal self help tactics for over three years
- IXCs withhold payments for traffic to high-volume end users
- IXCs also withhold payments for traffic that they do not dispute is being terminated to Northern Valley's other residential and business customers
- Northern Valley is being forced to expend considerable sums on litigation



CONCLUSION

- IXCs should not be allowed to practice self help
- It needs to be clear that pay-and-dispute is the law (especially when the nation's largest carriers are collecting from their customers and refusing to make any payments to small CLECs)
- Treating small competitive companies like RBOC's is not appropriate
- Northern Valley has taken steps to ensure that its business is conducted with the Commission's latest guidance in Farmers and Merchants

